



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-CA-2022-01**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 2 February 2023

Original language: English

Classification: **Public**

Annex 1 to the Appeal Judgment – Procedural Background

Specialist Prosecutor's Office:

Alex Whiting

Counsel for Hysni Gucati:

Jonathan Elystan Rees

Counsel for Nasim Haradinaj:

Toby Cadman

1. On 17 June 2022, the SPO requested that the Accused's detention be maintained by the Court of Appeals Panel, pending the resolution of any appeal filed against the Trial Judgment.¹
2. On 30 June 2022, the Panel granted Gucati's third request for temporary release on compassionate grounds.²
3. On 28 July 2022, at the SPO's request, the Panel confirmed that the Accused shall remain in detention pending their appeals, unless the Panel orders otherwise.³
4. On 13 September 2022, the Panel granted Gucati's fourth request for temporary release on compassionate grounds.⁴
5. On 15 September 2022, further to the SPO's notification of two confidential and *ex parte* communications, the Panel ordered the SPO to disclose to the Defence, under Rule 103 of the Rules, two interviews of Witness W04730, and to provide to the Defence, under Rule 102(3) of the Rules, a detailed notice of the second communication received by the SPO.⁵
6. On 23 September 2022, the Panel granted the SPO's request for protective measures relating to the two interviews of Witness W04730.⁶
7. On 17 and 18 October 2022, in order to address the SPO's alleged disclosure violations, the Accused submitted motions for alternate relief, in which they requested

¹ SPO Notification on Appeal, paras 2-4.

² Appeal Decision on Gucati Third Compassionate Release Request, paras 15, 18, 22.

³ Appeal Decision on SPO Request to Maintain Detention, para. 12.

⁴ Appeal Decision on Gucati Fourth Compassionate Release Request, paras 20, 23, 27.

⁵ SPO First Notification on Communication Received by the SPO; SPO Second Notification on Communication Received by the SPO; Appeal Decision on SPO Notifications.

⁶ SPO Request for Protective Measures; Appeal Decision on SPO Request for Protective Measures, paras 13, 15.

the Appeals Panel to overturn the convictions and (i) pronounce a judgment of acquittal, (ii) impose a stay of proceedings, or (iii) order a retrial.⁷

8. On 21 October 2022, further to the SPO's request for non-disclosure of the aforementioned second communication (identified by the Parties as "Item 206"), the Panel decided that this item shall not be disclosed to the Defence.⁸

9. On 7 November 2022, the Panel denied the Defence's motions for alternate relief relating to disclosure violations under Rule 103 of the Rules.⁹

10. On 9 November 2022, the Panel granted the Defence's requests for an extension of 14 days after the Panel ruled upon the outstanding Defence Requests to Contact Witnesses to file a potential motion for additional evidence.¹⁰

11. On 16 November 2022, the Panel dismissed Haradinaj's request for temporary release on compassionate grounds.¹¹

12. On 28 November 2022, the Panel denied the Accused's requests that, *inter alia*, interviews with certain witnesses be facilitated or the latter's contact details be disclosed, and an updated notice under Rule 102(3) of the Rules be ordered.¹²

⁷ Gucati Motion for Alternate Relief; Haradinaj Motion for Alternate Relief.

⁸ SPO Notice and Request Regarding Item 206; Appeal Decision on SPO Request Regarding Item 206. See also Gucati Response to SPO Request Regarding Item 206; Haradinaj Response to SPO Request Regarding Item 206.

⁹ Appeal Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations.

¹⁰ Appeal Decision on Defence Requests for an Extension of Time to File a Motion for Additional Evidence; Gucati Request for an Extension of Time to File a Motion for Additional Evidence; Haradinaj Request for an Extension of Time to File a Motion for Additional Evidence.

¹¹ Appeal Decision on Haradinaj Request for Temporary Release on Compassionate Grounds.

¹² Appeal Decision on Defence Requests to Interview Witnesses, paras 22, 28, 31. See Gucati Request to Interview Witnesses; Haradinaj Request to Interview Witnesses.

13. On 30 November 2022, the Panel denied Gucati's request that the Court of Appeals Panel disclose any knowledge it had regarding the Defence's investigations.¹³

14. On 1 December 2022, the Panel denied Haradinaj's request to adjourn the Appeal Hearing.¹⁴

15. On 9 January 2023, following Gucati's application, the Panel ordered the Parties to file public redacted versions of several filings or make submissions on why doing so would not (yet) be possible.¹⁵

16. On 16 January 2023, the Panel denied Haradinaj's request for an order to the SPO to release material pursuant to Rules 102(3) and 103 of the Rules.¹⁶

17. On 31 January 2023, in furtherance of the Appeal Decision on Gucati Application for Reclassification of Court of Appeals Decisions, the Panel (i) granted Gucati's application and issued public redacted versions of the seven Appeals Panel decisions at issue,¹⁷ and (ii) granted Haradinaj's and the SPO's requests and ordered the reclassification of the underlying filings.¹⁸

¹³ Appeal Decision on Gucati Request for Full Disclosure of the Knowledge of the Court of Appeals Panel regarding Defence Investigations; Gucati Request for Full Disclosure of the Knowledge of the Court of Appeals Panel regarding Defence Investigations.

¹⁴ Oral Order on Haradinaj Request for Adjournment of Appeal Hearing; Haradinaj Request for Adjournment of Appeal Hearing.

¹⁵ Appeal Decision on Gucati Application for Reclassification of Court of Appeals Decisions; Gucati Application for Reclassification of Court of Appeals Decisions.

¹⁶ Appeal Decision on Haradinaj Request for SPO Disclosure of Rule 102(3) or Rule 103 Material; Haradinaj Request for SPO Disclosure of Rule 102(3) or Rule 103 Material.

¹⁷ Further Appeal Decision on Gucati Application for Reclassification; Gucati Application for Reclassification of Court of Appeals Decisions. See also Appeal Decision on SPO Notifications; Appeal Decision on SPO Request for Protective Measures; Appeal Decision on SPO Request Regarding Item 206; Appeal Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations; Appeal Decision on Defence Requests for an Extension of Time to File a Motion for Additional Evidence; Appeal Decision on Defence Requests to Interview Witnesses; Appeal Decision on Gucati Request for Full Disclosure of the Knowledge of the Court of Appeals Panel regarding Defence Investigations.

¹⁸ Further Appeal Decision on Gucati Application for Reclassification; SPO Request to Reclassify F00089; Haradinaj Request to Reclassify F00088. See also Haradinaj Request for an Extension of Time to File a Motion for Additional Evidence; SPO Response to Applications for Extension of Time to File Motions for Additional Evidence on Appeal.